

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 38683 of 2003(E)

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PETITIONER:

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M.G.CHANDRASEKHARAN NAIR,  
S/O. LATE V.K.GOPALAN NAIR, AGED 51 YEARS,  
WORKING AS SPECIAL GRADE CONDUCTOR, K.S.R.T.C.,  
PONKUNNAM AND RESIDING AT 'KARTHIKA',  
KAVUMBHAGOM P.O., VIA. THEKKETHUKAVALA,  
CHIRAKKADAVU, KOTTATYAM.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:

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1. THE KERALA STATE ROAD TRANSPORT  
CORPORATION, REPRESENTED BY THE MANAGING DIRECTOR,  
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM.
2. SHRI P.K. BHASKARA PILLAI,  
STATION MASTER, KERALA STATE ROAD TRANSPORT  
CORPORATION, ERUMELI SUB DEPOT, ERUMELI.
3. SHRI V.V.VASANTHARAJAN,  
STATION MASTER, KERALA STATE ROAD TRANSPORT  
CORPORATION, ERUMELI SUB DEPOT, ERUMELI.
4. SHRI P.K.BHASKARAN,  
STATION MASTER, KERALA STATE ROAD TRANSPORT  
CORPORATION, STATION MASTER OFFICE, KUMILI.

R1 BY ADV.SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

APPENDIX (WPC NO.38683/03)

PETITIONER'S EXTS.:

EXT.P1: MEMORANDUM DATED 17.7.2001 ISSUED BY THE FIRST RESPONDENT.

EXT.P2: TRUE COPY OF MEMORANDUM DATED 8.6.2001 AND RELEVANT PORTION OF DRAFT GRADATION LIST OF CONDUCTORS IN RESPECT OF THE PETITIONER AND RESPONDENTS 2 TO 4 AS ON 1.4.2001 APPENDED THEREIN.

EXT.P3: TRUE COPY OF MEMORANDUM DATED 7.3.2002 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P4: TRUE COPY OF JUDGMENT DATED 12.3.2003 IN O.P.NO.14175/02 PASSED BEFORE THE HON'BLE HIGH COURT OF KERALA.

EXT.P5: TRUE COPY OF JUDGMENT DATED 10.10.2000 IN O.P.NO.17411/2000-W PASSED BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM.

EXT.P6: TRUE COPY OF REVIEW PETITION DATED 11.6.2003 SUBMITTED BY PETITIONER TO THE FIRST RESPONDENT.

EXT.P7: TRUE COPY OF JUDGMENT DATED 14.7.2003 IN W.P.C.NO.22293/03 PASSED BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM.

EXT.P8: TRUE COPY OF MEMORANDUM DATED 19.9.2003 ISSUED BY THE EXECUTIVE DIRECTOR (Admn.), OFFICE OF THE MANAGING DIRECTOR, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM TO THE PETITIONER.

**PIUS C. KURIAKOSE,J.**

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W.P.(C)No.38683 of 2003  
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Dated: 14<sup>th</sup> March, 2007

**JUDGMENT**

The petitioner who joined the service of the K.S.R.T.C. as a Reserve Conductor has filed this Writ Petition arraying the K.S.R.T.C., P.K.Bhaskara Pillai, V.V.Vasantharajan and P.K.Bhaskaran as respondents 1 to 4 respectively seeking inter alia a writ of certiorari quashing Exts.P1, P3 and P8 and seeking a declaration that he is entitled to get all promotions in the light of Exts.P4 and P5 prior to his juniors like respondents 2 to 4. He has also sought for a writ of mandamus commanding the first respondent to issue necessary orders granting all promotions in the light of Exts.P4 and P5 to the petitioner prior to the date on which his immediate junior the 2<sup>nd</sup> respondent was given promotion, i.e. 17.7.2001. Ext.P1 is the order dated 17.7.2001 by which the 2<sup>nd</sup> respondent was given cadre promotion as Station Master. Ext.P2 is the relevant portion of the gradation list which is produced to substantiate the claim of the petitioner that he is senior to respondents 2,3 and 4. Aggrieved by Ext.P1 and similar orders issued in favour of respondents 2,3 and 4, the petitioner filed representation before the 1<sup>st</sup> respondent who turned down the representation and issued Ext.P3 order on 7.3.2002. The petitioner relies on Ext.P4 judgment of this court in O.P.No.14175

of 2002 and contends that seniority in a cadre is to be computed in the light of the provisions contained in Rule 27 of the Kerala State and Subordinate Service Rules which has been adopted by the K.S.R.T.C. also. A direct recruitee through the Public Service Commission is entitled to count seniority with effect from the date of first effective advice and a promotee is entitled to count seniority from the date of appointment and that availing of leave without allowance will not in any way affect the seniority of the petitioners in the cadre of Drivers and that Rule 4 of Appendix XII-A deals with the period during which the incumbent was absent from duty. The petitioner relies also on Ext.P5 judgment of this court wherein another learned Judge also has taken the view that as far as promotions which fall due after the incumbent who had previously availed leave without allowance is come back in service, she should not be superseded based on Rule 4 of Appendix XII-A of K.S.R. Ext.P6 is copy of the Review Petition which was submitted by the petitioner relying on Exts.P4 and P5 and Ext.P7 is copy of the judgment of this court by which the K.S.R.T.C. was directed to have an early decision on Ext.P6. Pursuant to Ext.P7, Ext.P8 order has been issued by the Executive Director of the K.S.R.T.C. Apart from pointing out that Ext.P8 has been issued by the Executive Director

though the direction under Ext.P7 was to the Managing Director, the petitioner impugns Ext.P8 on various grounds and has filed the Writ Petition for the reliefs already indicated.

2. The K.S.R.T.C. has filed a counter affidavit justifying Ext.P8 and trying to distinguish the case of the petitioner from the cases covered by Exts.P4 and P5.

3. To the counter affidavit, the petitioner has filed a reply affidavit.

4. Heard Mr.N.Unnikrishnan, counsel for the petitioner and Mr.Johnson P.John, Standing Counsel for the K.S.R.T.C.

5. Mr.Unnikrishnan drew my attention to Exts.P4 and P5 and also to the judgment of this court in W.A.No.1167 of 2003 wherein the Division Bench has endorsed the views expressed by the learned Single Judge in O.P.No.14175 of 2002. Learned counsel drew my attention to my own judgment in W.P.C.No.22714 of 2006. Lastly learned counsel placed before me copy of the order No.PL4/000625/2007 issued by the Managing Director of the K.S.R.T.C. which would show that in implementation of the directions in W.A.Nos.1167/03 and 1179/05 the K.S.R.T.C. has accepted the principle that leave availed by an employee does not in any way take away the seniority gained by him based on the date of appointment

to that cadre and that such employees will forfeit only those promotions which fell due while they were on leave without allowance and not the promotions which becomes available after they rejoin service.

6. Mr.Johnson P.John, Standing Counsel for the K.S.R.T.C. tried to resist all the submissions of Mr.Unnikrishnan on the basis of the counter affidavit filed by the K.S.R.T.C. My attention was drawn by Mr.Johnson to Rule 69, Part I K.S.R. which provides that an officer on leave shall not take up any service or accept any employment without obtaining previous sanction of the authority empowered to fill up the post held by him and the period of leave without allowance will be 'Dies-non' for all practical purposes. Counsel also would place before me a copy of the Government Order, G.O.(P)No.274/70/Fin. dated 29.4.1970 in support of his argument that the period during which the petitioner was on leave without allowance has to be treated as 'dies-non' for all purposes and argued that to that extent petitioner will forfeit his seniority to respondents 2 to 4. Mr.Johnson would refer to the Division Bench judgment of this court in **K.S.R.T.C. v. Noorudeenkutty** (2005(3) KLT 504).

7. **K.S.R.T.C. v. Noorudeenkutty** (supra) was a case in which the Division Bench considered the effect and implications of Rule 4 of

Appendix XII-A of the K.S.R. on employees taking up employment abroad prior to 16.12.1983 and the employees who availed such leave after 23.6.1984, the day on which Appendix XII-A was made applicable to the employees of the K.S.R.T.C. That judgment in my view does not answer the specific question which has arisen for consideration in this case. That judgment in fact while referring to Rule 4 of Appendix XII-A states that Rule 4 specifies that **those who are on leave without allowance with effect from 16.12.1983 in Government and from 23.6.1984 in K.S.R.T.C. will lose all the service benefits including seniority and promotion that became due during the currency of the leave.**

8. The issue I notice is squarely covered by Exts.P4 and P5 judgments and the judgment of the Division Bench of this court in W.A.Nos.1167 of 2003 and 1179 of 2005. In fact the same issue was considered and decided by me in W.P.C.No.22714 of 2006. Order No.PL4/000625/2007 dated 12.2.2007 issued by the Managing Director of the K.S.R.T.C. will show that the directions in the judgment of the Division Bench in W.A.Nos.1167 of 2003 and 1179 of 2005 have been implemented by the Managing Director in so far as the same relates to the parties in those cases. This being the position, I am of the view that notwithstanding the contentions, the

petitioner is entitled for relief. Respondents 2, 3 and 4 despite service of notice on them have not chosen to file any counter affidavit. Nevertheless I am not inclined to grant the prayer for quashing Ext.P1 promotion order issued in favour of the 2<sup>nd</sup> respondent. It would suffice if the petitioner is also given promotion and assigned seniority above the 2<sup>nd</sup> respondent in the concerned list. Accordingly, it is declared that the petitioner is entitled to all the promotions in the light of Exts.P4 and P5 even prior to his juniors, respondents 2 to 4 and also for all consequential benefits. In view of the above declaration, there will be a direction to the first respondent to issue necessary orders granting all promotions to the petitioner in the light of Exts.P4 and P5 prior to 17.7.2001, the date on which the 2<sup>nd</sup> respondent was given promotion. Necessary orders for implementation of the above directions will be issued by the the first respondent at his earliest and at any rate within six weeks of receiving a copy of this judgment.

The Writ Petition will stand allowed as above. No costs.

srd

**PIUS C.KURIAKOSE, JUDGE**